

AN ORDINANCE

TO AMEND VARIOUS SECTIONS OF CHAPTER 19 OF THE CODE OF ORDINANCES OF THE CITY OF GREENVILLE (LAND MANAGEMENT ORDINANCE) TO MODIFY THE REQUIREMENTS APPLYING TO "NONCONFORMING SITUATIONS" (Z-9-2012)

WHEREAS, the city of Greenville benefits from a diverse retail and business economy, much of which was developed prior to implementation of the design requirements of the City's development regulations; and

WHEREAS, changes in the retail and business community often lead to the reuse of existing sites and facilities, many of which do not comply with prevailing development standards; and

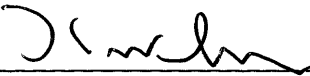
WHEREAS, in working with businesses which reuse existing sites and facilities Planning Staff has identified several areas that demand attention to avoid unreasonable requirements and the prospect of losing business; and

WHEREAS, Planning Staff has proposed amendments to the Land Management Ordinance (LMO), which are attached hereto and incorporated by reference, which seek to balance the elimination of nonconforming situations while accommodating the reuse of existing facilities and infrastructure;

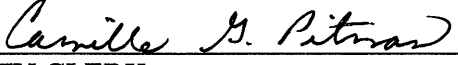
WHEREAS, the City Planning Commission pursuant to public notice held a public hearing on March 8, 2012, to consider the proposed amendments to the LMO to modify the requirements applying to nonconforming situations and recommended approval of the proposed amendments;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GREENVILLE, SOUTH CAROLINA that Chapter 19 of the Code of Ordinances of the City of Greenville (Land Management Ordinance) is amended to modify the requirements applying to nonconforming situations which are attached hereto as "Proposed Amendments to Chapter 19 Re: Nonconforming Situations" and incorporated herein by reference.

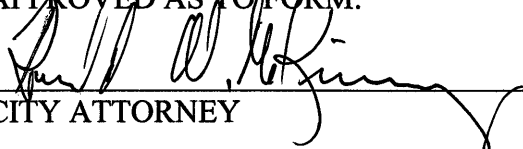
DONE, RATIFIED AND PASSED THIS THE 9 DAY OF April, 2012.

  
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MAYOR

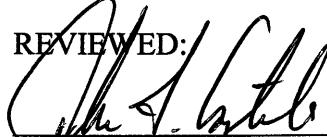
ATTEST:

  
\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

REVIEWED:



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CITY MANAGER

**ATTACHMENT**  
**PROPOSED AMENDMENTS TO CHAPTER 19; RE:**  
**NONCONFORMING SITUATIONS**

1. Amend Sec 19-1.5.3, *No Development Until Compliance With This Chapter*, to read as follows:

*General.* Except as specifically provided in this chapter, no structure, land or water, shall hereafter be used and no structure or part thereof shall hereafter be located, erected, moved, reconstructed, extended, converted (change of use) or structurally altered, without full compliance with the provisions of this chapter and all other applicable city, state and federal regulations.

2. Amend Sec 19-6.1.2, *Off-Street Parking and Loading, Applicability*, to read as follows:

*(D) Change of use.* Off-street parking, bicycle parking and loading shall be provided for any change of use ~~or manner of operation pursuant to the following:~~ that would, based on the minimum ratios established in this section, result in a requirement for more parking or loading spaces than the existing or previous use. Any additional parking required by this section shall be installed prior to issuance of a certificate of occupancy.

- (1) If the change of use constitutes less than 50 percent of the floor area of a structure or lot accommodating one or more uses (within a five-year period), the property shall comply with the provisions of this section to the greatest extent practicable as determined by the administrator provided the off-street parking and loading requirements equal at least 75 percent of the minimum ratio established by this section and provided further that compliance can be achieved in conformance with section 19-9.1.1 (B).
  - (2) If the change of use constitutes 50 percent or more of the floor area of a structure or lot accommodating one or more uses (within a five-year period), the property shall comply with the provisions of this section to the greatest extent practicable as determined by the administrator provided the off-street parking and loading requirements equal at least 100 percent of the minimum ratio established by this section and provided further that compliance can be achieved in conformance with section 19-9.1.1 (B).
3. Amend Sec 19-6.2.1 (B), *Landscaping, Buffering, and Screening, General, Applicability* to read as follows:  
  
*(5) Change of use.*
  - (a) If a change of use constitutes less than 25 percent of the floor area of a structure or lot accommodating one or more uses (within a five-year period), the property shall comply with the provisions of this section and all other applicable city, state, and federal regulations to the greatest extent practicable

as determined by the administrator provided the new use fully complies with the requirements of section 19-6.2.3, *Buffering and Screening Requirements*, and section 19-6.2.5, *Additional Screening Requirements*.

- (b) If a change of use constitutes 25 percent or more but less than 50 percent of the floor area of a structure or lot accommodating one or more uses (within a five-year period), the property shall comply with the provisions of this section and all other applicable city, state, and federal regulations to the greatest extent practicable as determined by the administrator provided the new use fully complies with the requirements of: section 19-6.2.2, *Street Trees*; section 19-6.2.3, *Buffering and Screening Requirements*; and section 19-6.2.5, *Additional Screening Requirements*.
- (c) If a change of use constitutes 50 percent or more of the floor area of a structure or lot accommodating one or more uses (within a five-year period), the property shall comply with the provisions of this section and all other applicable city, state, and federal regulations to the greatest extent practicable as determined by the administrator provided the new use fully complies with the following requirements: section 19-6.2.2, *Street Trees*; section 19-6.2.3, *Buffering and Screening Requirements*; 50 percent of the planting rate established at section 19-6.2.2 (D) (4), *Interior Parking Lot Landscaping*; 50 percent of the perimeter buffer yard requirements established at section 19-6.2.4, *Street Buffer Yards*; and section 19-6.2.5, *Additional Screening Requirements*.

- 4. Amend Article 19-9, NONCONFORMITIES to read as follows:

#### **ARTICLE 19-9. NONCONFORMITIES**

##### **Sec. 19-9.1 - General**

###### **19-9.1.1.**

*Purpose and intent.*

###### **(A)**

Within the provisions established by this chapter, there exist nonconforming situations ~~uses of land, structures, lots and signs~~ that were lawfully established before this chapter was adopted or amended, that now do not conform to the terms and requirements of this chapter. Nonconforming situations include: unlawful uses of land or buildings; and, lots, structures, and signs that do not conform to one or more regulations of the district in which the lot, structure, or sign is located. The purpose ~~and intent~~ of this article is to regulate and limit the continued existence of those uses, ~~standards~~, structures, lots, and signs that do not conform to the provisions of this chapter or any amendments thereto.

###### **(B)**

It is the intent of this chapter to permit these nonconforming situations ~~nonconformities~~ to continue until they are removed, but not to encourage their survival except under the limited circumstances

established in this article. The provisions of this article are designed to curtail substantial investment in nonconforming situations ~~nonconformities~~ to preserve the integrity of this chapter. However, it is not the intent of this chapter to require compliance with a requirement of this chapter that is not reasonably achieved if compliance cannot be achieved without adding additional land not under the same ownership to the lot where the nonconforming situation is maintained or moving a substantial structure that is located on a permanent foundation.

**19-9.1.2.**

*Authority to continue.* Nonconforming situations ~~Nonconformities~~ are allowed to continue in accordance with the requirements of this article.

**19-9.1.3.**

*Determination of nonconformity status.* In all cases, the burden of establishing that a nonconforming situation ~~nonconformity~~ lawfully exists shall be on the owner of the land on which the purported nonconforming situation ~~nonconformity~~ is located.

**19-9.1.4.**

*Minor Repairs, ~~and normal maintenance, and reconstruction~~*

**(A)**

~~Minor Repairs and normal maintenance~~ that are required to keep nonconforming uses, structures, and signs in a safe condition are permitted, provided that the ~~minor~~ repair or maintenance does not extend, expand, or enlarge the nonconforming use, structure, or sign. For the purposes of this section, "~~minor~~ repair or ~~normal~~ maintenance" shall include the total cost of labor and materials (within a five-year period) utilized in the repair or maintenance, the value of which does not exceed 50 percent of the appraised value of the structure or 50 percent of the replacement cost of the sign and: mean:

**(1)**

*Maintenance of safe condition.* Repairs that ~~are~~ is necessary to maintain a nonconforming use, structure, or sign in a safe condition;

**(2)**

*Correction of damage or deterioration.* Repairs that ~~are~~ is necessary to correct any damage or deterioration to the structural soundness or interior appearance of a building or structure ~~without altering the building or structure;~~

**(3)**

*Maintenance of land for safety.* Maintenance of land areas to protect against health hazards and promote the safety of surrounding land uses; and

**(4)**

~~Limited Sign repairs and maintenance.~~ Repairs and maintenance of nonconforming signs, such as repainting and electrical repairs,

~~whose costs do~~ provided the cost does not exceed 50 percent of the replacement cost of the sign.

(B) In the event any nonconforming structure is damaged by any means, to the extent of 50 percent or more of its replacement value prior to such destruction, such structure shall not be repaired or restored except in conformance with the standards for the zoning district in which it is located. The determination of replacement valuation shall be made by the administrator or, at the applicant's option, by a certified independent appraiser.

(C) In the event a structure is damaged by any means, to an extent of less than 50 percent of its replacement value prior to such damage, no repairs or restoration shall be made unless a building permit is obtained within six months of the date of the damage and repair or restoration is begun within one year after the date of such damage and is diligently pursued to completion. The determination of replacement valuation shall be made by the administrator or, at the applicant's option, by a certified independent appraiser.

(D) Garages, carports, and storage buildings accessory to single family dwellings in which the garages, carports, or storage buildings are nonconforming due to the structure not meeting minimum setback requirements may be repaired, replaced, or increased in area not exceeding 20 percent of the original footprint of the structure regardless of the repair or replacement cost relative to appraised value provided there is no increase to any nonconformity and provided further that the structure is not increased in its number of stories.

#### 19-9.1.5.

*Change of tenancy or ownership.*

(A)

*General.* Changes of tenancy, ownership, or management of a use containing an existing a nonconforming situation wherein the use does not change nonconformity are permitted, and, in such cases, the nonconforming situation shall continue to be subject to the requirements of this article.

(B)

*Exception.* The transfer of ownership or operation of a sexually oriented business located within 1,000 feet of another sexually oriented business is not permitted (see subsection 19-4.3.3.(A) (12) ~~(10)~~, sexually oriented business).

#### 19-9.1.6.

Temporary nonconforming uses. A temporary use permit may be issued by the administrator pursuant to subsection 19-2.3.11, temporary use permits, for an appropriate period of time for nonconforming buildings, structures or uses

incidental to building construction or land development, provided that the owner of the temporary nonconforming use agrees to remove the temporary nonconforming use upon expiration of the permit.

**19-9.1.7.**

Amortization of nonconforming uses. The following nonconforming uses shall be discontinued by June 30, 2015 at the owner's expense with no cash or in-kind payment due from the city:

**(A)**

Bodily fluid collection establishments.

**(B)**

Day labor service agencies.

**(C)**

Check-cashing establishments.

**(D)**

Title loan lenders.

**(E)**

Deferred presentment lenders.

**(F)**

Pawnshops.

**Sec. 19-9.2. – Change of use where nonconforming situation exists ~~Nonconforming uses.~~**

**19-9.2.1**

~~General. Nonconforming uses are declared generally incompatible with the principal permitted uses in the zoning district in which they are located and with the provisions of this chapter. Nonconforming uses shall be subject to the following standards:~~

Change to permitted use. A nonconforming use may be changed to a principal use permitted in the district in which the property is located provided all other requirements of this chapter applicable to that change of use can be met. Permission to accomplish the change must be obtained in the same manner as permission to make the initial use of a vacant lot in the district. Once conformity with this chapter is achieved, the property may not be changed to a nonconforming use.

**19-9.2.2.**

Change of to another nonconforming use. A nonconforming use shall not be changed to any other nonconforming use except as may be permitted pursuant to procedures and standards in subsection 19-2.3.5, special exception permit.

**19-9.2.3**

~~Expansion and enlargement.~~

~~(A)~~

~~Area occupied by nonconforming use.~~ A nonconforming use shall not be enlarged, expanded in area occupied, or intensified, except a nonconforming use may be enlarged in any area of the same structure which is arranged or designed for such use prior to the date the use became a nonconformity.

~~(B)~~

~~Structure devoted to nonconforming use.~~ A structure devoted to a nonconforming use shall not be enlarged, extended, constructed, moved, or structurally altered except to change the use of the structure to a use permitted in the zoning district in which the structure is located.

~~(C)~~

~~The standards of this section shall not apply to a nonconforming residential use established on or before June 12, 1995, and located within a residential district.~~

**19-9.2.4**

~~Abandonment and reestablishment.~~

~~(A)~~

~~General.~~ A nonconforming use shall not be reestablished after vacancy, abandonment, or discontinuance for any 12 consecutive months, except pursuant to subsection 19-9.2.5, repair and replacement, in which case the use may be reestablished if the reestablishment of the use occurs within three months from the time the renovations or repairs are completed. (See subsection 19-6.6.2(M))

~~(B)~~

~~Exceptions.~~ The standards of this section shall not apply to the following:

~~(1)~~

~~Nonconforming uses.~~ The following uses shall not be reestablished after vacancy, abandonment, or discontinuance for any 90 consecutive days. Whenever one of the following uses is pursuant to a lessee's leasehold interest, then the nonconforming use shall terminate at the end of the current lease term and no nonconformity shall exist thereafter (current lease term refers to the lease term in effect on August 7, 2006).

~~(a)~~

~~Bodily fluid collection establishments.~~

~~(b)~~



~~Day labor service agencies.~~

~~(c)~~

~~Check-cashing establishments.~~

~~(d)~~

~~Title loan lenders.~~

~~(e)~~

~~Deferred presentment lenders.~~

~~(f)~~

~~Pawnshops.~~

~~(2)~~

~~Abandoned signs.~~ Abandoned signs are prohibited pursuant to subsection 19-6.6.2, prohibited signs.

~~(3)~~

~~Residential uses.~~ Residential uses established on or before June 12, 1995, and located within residential districts.

#### **19-9.2.5**

~~Repair and replacement.~~ On any building devoted in whole or in part to any nonconforming use, work may be done on ordinary repairs or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing provided that the cubic content of the building as it existed at the time of passage of the ordinance from which this article is derived or at the time of passage of an amendment of this chapter shall not be increased. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part of a building declared to be unsafe by any official charged with protecting the public safety upon order of such official.

#### **19-9.2.6**

~~Temporary nonconforming uses.~~ A temporary use permit (subsection 19-2.3.11), temporary use permits) may be issued by the administrator for an appropriate period of time for nonconforming buildings, structures or uses incidental to building construction or land development, provided that the owner of the temporary nonconforming use agrees to remove the temporary nonconforming use upon expiration of the permit.

### **Sec. 19-9.3. – Nonconforming Structures Expansion or enlargement where nonconforming situation exists**

#### **19-9.3.1.**

~~Enlargement.~~ Any enlargement, alteration, or expansion of a nonconforming structure that increases the degree of nonconformity is prohibited. (For example, a structure that has a five-foot side setback where the ordinance requires a ten-foot side setback cannot be enlarged so as to further encroach into the side setback.) Expansion of the structure that complies with applicable dimensional standards or that decreases the degree of nonconformity is

~~permitted without requiring a variance permit (subsection 19-2.3.7, variance permits). The determination of whether a proposed expansion increases the degree of nonconformity shall be made by the administrator.~~

Increase of Nonconformity. Except as specifically provided in this section, the extent of nonconformity of a nonconforming situation may not be increased. In particular, physical alteration of structures, the placement of new structures on open land, the relocation of structures, or the extension of a use to cover more land than was occupied when the use became nonconforming, is unlawful if such activity results in:

**(A)**

An increase in the total amount of space devoted to a nonconforming use; or,

**(B)**

Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations, density limitations, parking requirements, etc.

**(C)**

Notwithstanding subsection (B), the administrator may authorize the enlargement of a single family dwelling determined to be nonconforming due to its not meeting minimum setback requirements provided there is no decrease in the prevailing setback.

### **19-9.3.2.**

~~Demolition and rebuilding.~~ A nonconforming structure shall not be re-established as a nonconforming structure after demolition, damage, or destruction except pursuant to subsection 19-9.3.3, reconstruction after damage, in which case the structure may be reestablished if the reestablishment of the structure occurs within 12 months from damage or destruction.

Increase of Use. Except as may be permitted by special exception pursuant to subsection 19-2.3.5, *Special exception permit*, a nonconforming use shall not be enlarged, expanded in area occupied, or intensified. A nonconforming use may be enlarged in any area of the same structure which is designed for such use prior to the date the use became a nonconforming use.

### **19-9.3.3.**

~~Reconstruction after damage.~~

**(A)**

~~Greater than 50 percent of value.~~ In the event any nonconforming structure is damaged or destroyed, by any means, to the extent of more than 50 percent of its structural replacement value prior to such destruction, such structure shall not be restored except in conformance with the standards for the zoning district in which it is located. The determination of such reduced structural valuation shall be made by the

administrator or, at the applicant's option, by a certified independent appraiser.

(B)

~~Fifty percent or less of value.~~ In the event a structure is damaged or destroyed, by any means, to an extent of 50 percent or less of its structural replacement value prior to such damage or destruction, no repairs or restoration shall be made unless a building permit is obtained within six months, and restoration is actually begun within one year after the date of such partial destruction and is diligently pursued to completion.

#### **19-9.3.4.**

~~Relocation.~~ A nonconforming structure shall not be moved, in whole or in part, to another location on or off the parcel of land on which it is located, unless upon relocation it shall conform to the standards and requirements of this chapter.

#### **19-9.3.5**

~~Conversion to another use.~~ The use of a building or structure which is nonconforming due to its failure to comply with minimum height, setback, floor area ratio, lot area and lot coverage requirements may be changed to a use that is permitted in the zoning district in which it is located, so long as no further encroachment is made into the existing setbacks.

### **Sec. 19-9.4. – Nonconforming lots of record Discontinuance and reestablishment of a nonconforming situation.**

~~In any zoning district in which single family dwellings are permitted, notwithstanding limitations imposed by other provisions of this article, a single family dwelling and customary accessory buildings may be erected on any single lot of record existing on January 1, 2008. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the zoning district, provided that setback dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located to the greatest extent practicable as determined by the administrator.~~

#### **19-9.4.1**

A nonconforming use shall not be reestablished after: (i) discontinuance for 180 days or; (ii) discontinuance for any period of time without a present intention to reinstate the nonconforming use. Pursuant to subsection 19-9.1.4, repair, maintenance, and reconstruction, a nonconforming use may be reestablished if the reestablishment occurs within three months from the time the renovations or repairs are completed.

#### **19-9.4.2**

If a nonconforming use is located within the same development as a conforming use, discontinuance of the nonconforming use pursuant to

subsection 19-9.4.1 (A) (2) shall terminate the right to continue the use thereafter.

**19-9.4.3**

Except as specifically provided in this chapter, a structure or lot accommodating a use that does not conform to one or more regulations of Article 19-6, development and design standards, shall not be reestablished or changed to another use after discontinuance for 180 days.

**19-9.6.2**

Nonconforming parking lots, applicability

**(C)** All parking surfaces shall be maintained free of all weeds, trash, dust, debris, and potholes. Surfaces may be re-sealed without complying with the requirements of this subsection provided the administrator approves a plan reflecting to the extent practicable compliance with the requirements of section 19-6.1, off-street parking and loading.